IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
THURSDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MRS JUSTICE T.MEENA KUMARI
and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 7296 of 2004

Between:
Gulam Dastagir S/o. Late Md.Hussain
R/o. H.No.10-2-347/B/19/A,
Feioz Gandhi Nagar, Mallepalli, Hyderabad.

.....
PETITIONER

AND

1 Government of A.P represented by Chief Secretary, Secretariat, Hyderabad.
2 Commissioner of Police and Addl. District Magistrate (Executive) Hyderabad.

.....RESPONDENS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction, more particularly one in the nature of writ of Habeas Corpus directing the respondents to produce Gulam Samdhani @ Parvez, S/o. Gulam Dastagir, aged about 27 years R/o. H.No. 10-2-347/B/19/A Mallepally, Hyderabad now detained in Central Prison, Chanchalguda, Hyderabad before this Hon'ble Court and release him forthwith by declaring that his detention is arbitrary, illegal, void and unwarranted.

For the Petitioner: MR.O.KAILASHNATH REDDY

For the Respondents : The Advocate General

The Court Made the Following :

O r d e r:

(*Per the Hon'ble Smt. Justice T. Meena Kumari)*

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1) This writ petition is filed seeking a writ of habeas corpus directing the respondents to produce Gulam Samdhani @ Parvez s/o Gulam Dastagir, aged about 27 years, resident of H.No.10-2-347/B/19/A, Mallepally, Hyderabad, now detained in Central Prison, Chanchalguda, Hyderabad.

2) When the writ petition came up for admission on 28-4-2004 the learned Additional Advocate General took notice on behalf of the respondent and prayed for time for filing counter.

Today, when the matter is taken up for hearing the learned Advocate General appeared in the matter. A counter is filed on behalf of the respondents submitting that the detenu, Gulam Samdhani @ Parvez s/o Gulam Dastagir, is presently lodged in Central Prison, Chanchalguda, Hyderabad as per the detention order dated:13-2-2004 passed by the second respondent under sub-section (g) of Section 2 of Andhra Pradesh Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Goondas, Immoral traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act'), as the detenu has been engaged in unlawful acts and acting prejudicial to the maintenance of public order. He also made available a copy of the detention order passed by the second respondent for the perusal of the Court.

3) A perusal of the detention order shows that the detenu is in

detention for the following grounds:

1. *Cr.No.172/2003 u/s 506 IPC of Habeebnagar PS., Hyderabad.*

   On 18-6-2003 at about 7.45 PM, you along with your associate Jahangir armed with daggers went in an auto to Mallepally and tried to attack one Mohd Firdous who is a member of your rival gang with daggers while he was sitting at Fani Ground, Mallepally, due to previous enmity and that the said Firdous ran away for his life. In this case, you surrendered before the Hon'ble court on22-1-2004 and you were released on bail. The case was charge-sheeted on27-1-2004 and is pending trial before the III Metropolitan Magistrate, Hyderabad.

2. *Cr.No.1091/2003 u/s 307 IPC of Saifabad PS., Hyderabad.*

   On 21-11-2003 at about 2100 hours, you along with your associates, Jahangeer and others attacked Syed Munawaruddin @ Sheru s/o Syed Moizuddin, aged about 26 years, resident of Mallepally, Hyderabad, who is your rival gang leader, with swords, causing grievous injuries, with intent to kill him due to gang rivalry. In this case, you surrendered in the XV Metropolitan Magistrate, Hyderabad on1-12-2003 and you were released on bail on 15-12-2003. This case is under investigation.

4) The learned Advocate General submitted that the detenu has been indulging in unlawful activities very frequently thereby creating panic in the general public and disturbing the public order. Therefore the detention order is passed ordering for detention of the detenu.

On the other hand Sri O. Kailashnath Reddy, learned counsel for the petitioner submitted that in the grounds of detention the incidents shown are individual in nature, which are in no way prejudicial to the maintenance of the public order. It is clearly

mentioned in the grounds that due to the previous enmity between the detenu and others, the incidents took place. For the offences if any committed by the detenu, he can be punished under the ordinary criminal law and he cannot be detained under the Act. The learned counsel further submitted that except the above said two crimes, no other substantial material placed on record substantiating the detention of the detenu.

In support of his contention, he relied on Division Bench decision of this Court in *Sanga Sankarappa vs. Chief Secretary, Govt. of A.P.*[1], wherein it was held by their Lordships that:

> *"....the detaining authority has to be satisfied that the extent and reach of the alleged activities are such that they travel beyond the capacity of the ordinary law to deal with him and to prevent his subversive activities affecting the community at large or a large section of his society, his detention is necessary. The impact of these activities upon the even tempo of life of the society will determine whether the disturbance caused by such activity amounts only to the breach of "law and order" or it amounts to disturbance of "public order". Keeping the above principle in mid, if we examine the grounds in this case, we find it difficult to hold that they fall within the realm of the public order. "*
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> *"...In our minds that the activities mentioned are the matters which can be dealt with under ordinary criminal law and that they do not fall within the category of disturbances of the public order."*

Their Lordships, have thus, made it clear that the offences which can be dealt under the ordinary criminal law and which do not fall within the category of disturbance of the public order, can

be dealt under the ordinary criminal law.

A perusal of the grounds of detention mentioned against the detenu are that due to previous enmity between the detenu and other persons, he was involved in two crimes. The said two cases are still pending adjudication before a competent criminal court. No material is also placed before this court that the detenu was indulging in criminal activities *de hors* the two crimes mentioned above.

Therefore on a perusal of the detention order and the decision of the Division Bench, we are of the opinion that the offences alleged against the detenu can be dealt with under ordinary criminal law and the detenu need not be dealt under the provisions of the Act. In that view of the matter, the proceedings of the second respondent dated:13-2-2004 are liable to be quashed.

5) Accordingly, the writ petition is allowed. The detention order passed by the Commissioner of Police, Hyderabad, the second respondent herein, in SB(1).No.1/PD-DG/S-1/2004, dated: 13-2-2004 against the detenu, Gulam Samdhani @ Parvez s/o Gulam Dastagir, aged about 27 years, resident of H.No.10-2-347/B/19/A, Mallepally, Hyderabad, is quashed. The detenu is directed to be released forthwith, if he is not required to be detained in any other case. No costs.

Dated: 17-6-2004
Bvs/isn

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER.

To

1) The Chief Secretary, Govt. of A.P., Secretariat, Hyderabad.
2) The Commissioner of Police and Addl. District Magistrate (Executive) Hyderabad.
3) 2 CCs to the learned Advocate General, High Court Buildings, Hyderabad (OUT)
4) 2 CD copies.
5) Spare.

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[1] 1997 (1) ALD (Crl.) 945 (AP)